

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claims 1-7, drawn to a hair shampoo composition; and

Group II: Claim 8, drawn to a hair protecting method,  
and required the election of a single species from

Amphipathic amide lipids of Formula (1);

Amphipathic amide lipids of Formula (2);

Amphipathic amide lipids of Formula (3);

Amphipathic amide lipids of Formula (4).

Applicants elect with traverse the invention of Group I (Claims 1-7) and the species amphipathic amide lipids of Formula (1).

Restriction is only proper if the claims to the restricted groups are independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusions with regard to patentable distinctness. M.P.E.P. § 803.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness. Rather the Office has merely stated conclusions. Accordingly, the Office has failed to meet the burden necessary to sustain the Restriction Requirement.

In chemical cases a specified group of materials which do not necessarily belong to an otherwise class can be claimed together employing "Markush" language. The accepted expression for Markush grouping is "selected from the group consisting of". The Markush practice sanctions the claiming together operable substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics. The members of the Markush grouping need only possess at least one property in common which is mainly responsible for the function in the claimed relationship.

In the instant application, the common characteristic is the amphipathic amide lipid nucleus as shown in Formula (1). The same process for preparation, and the utility in a generic sense suffices.

Further, M.P.E.P. § 803 states as follows:

“If a search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even if it includes claims to distinct and independent inventions.”

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the restriction to be proper there must be patentable differences between the species as claimed. M.P.E.P. § 808.01(a).

Finally, Applicants respectfully submit that should the elected invention be found allowable, the Office should expand its search to include the non-elected groups.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

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